

6-05/400.00 Exceptions to Advanced Fee Deposit

This section delineates the cases wherein the levying officer may not demand and receive an advance fee deposit. In each case, however, there are provisions, under certain circumstances, for the fees to be collected at a later time. As a consequence, even though a fee is not in fact received, all returns of service should include the statutory fee amount.

In all cases where a levy is made against personal property and such property, whether money or otherwise, comes into the levying officer's possession, the officer should deduct the appropriate fees from money received or, in the case of other personal property, not release the property until the fees have been paid by the defendant/judgment debtor or other party to whom the property is otherwise required to be released. CCP 488.100 and 687.050 give the levying officer a special lien, dependent upon possession, on personal property levied upon in the amount of the levying officer's costs for which an advance has not been made.

In any case where the advance fee deposit is not required, it is only waived to the extent of the levying officer's fee for service. If other costs are going to necessarily be incurred by the levying officer, such as keeper fees, storage or drayage charges, etc., an advance fee deposit is required to cover such costs.
